

**IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, CHANCERY DIVISION**

PEOPLE OF THE STATE OF ILLINOIS,)
ex rel. KWAME RAOUL, Attorney)
General of the State Illinois,)
)
Plaintiff,)

v.)

No. 2021-CH-05279

METAL MANAGEMENT MIDWEST,)
INC., d/b/a SIMS METAL)
MANAGEMENT, an Illinois)
corporation,)
)
Defendant.)

AGREED PRELIMINARY INJUNCTION ORDER

This cause coming before this Court by agreement of the Plaintiff, PEOPLE OF THE STATE OF ILLINOIS, *ex rel.* KWAME RAOUL, Attorney General of the State of Illinois, and the Defendant, METAL MANAGEMENT MIDWEST, INC., d/b/a SIMS METAL MANAGEMENT, due notice having been given, the Court having jurisdiction over the parties and the subject matter herein, and the Court otherwise being duly advised in the premises;

NOW THEREFORE, the Plaintiff having alleged that the Defendant has violated the Illinois Environmental Protection Act (“Act”) and Illinois Pollution Control Board (“Board”) regulations and that a preliminary injunction should issue pursuant to Section 42(e) of the Act, 415 ILCS 5/42(e) (2020), to restrain the violations; and the parties having agreed to the entry of this Agreed Preliminary Injunction Order (“Agreed Order”), the Court enters the following preliminary injunction pursuant to Section 42(e) of the Act, 415 ILCS 5/42(e) (2020), which shall remain in effect until further order of this Court.

I. BACKGROUND

1. On October 15, 2021, the Plaintiff filed its Complaint for Injunctive Relief and Civil Penalties (“Complaint”) against the Defendant.

2. The Defendant, an Illinois corporation, owns and operates a metal shredding and recycling facility at 2500 South Paulina Street, Chicago, Illinois (“Facility”).

3. The Defendant receives, stores, recycles, and ships ferrous and non-ferrous recyclable materials at the Facility, including end-of-life vehicles (“ELV”), major appliances, and other post-consumer sheet metal and metal clips.

4. ELVs and other metallic materials are processed through a hammermill shredder at the Facility.

5. The Plaintiff alleges in its Complaint that the Defendant, by failing to demonstrate that its shredding operations have achieved an overall reduction in uncontrolled volatile organic material (“VOM”) emissions of at least 81 percent, has violated and continues to violate Section 9(a) of the Act, 415 ILCS 5/9(a) (2020), and Section 218.986(a) of the Board Air Pollution Regulations, 35 Ill. Adm. Code 218.986(a).

II. GENERAL PROVISIONS

1. This Agreed Order is not a final resolution of the merits of the Plaintiff’s Complaint, but rather addresses the Plaintiff’s most immediate concerns regarding the Defendant’s failure to demonstrate an overall reduction in uncontrolled VOM emissions of at least 81 percent from its shredding operations alleged in the Complaint.

2. By entering into this Agreed Order and complying with its terms, the Defendant does not affirmatively admit the allegations of violation within the Complaint and referenced

above, and this Agreed Order and compliance therewith shall not be interpreted as including such admission.

3. The Defendant shall not claim that any report or any exhibits or attachments thereto, or any portion thereof, submitted to the Plaintiff or the Illinois Environmental Protection Agency (“Illinois EPA”) pursuant to this Agreed Order are subject to attorney-client privilege or constitute attorney work product.

4. This Agreed Order shall apply to and bind the parties hereto.

III. PRELIMINARY INJUNCTIVE RELIEF

1. The Defendant shall develop and implement a control system (“Control System”) designed to achieve an overall reduction in uncontrolled VOM emissions of at least 81 percent from the hammermill shredder at the Facility, as required by 35 Ill. Adm. Code Part 218, Subpart TT.

2. Within sixty (60) days after the date of entry of this Agreed Order, the Defendant shall submit to the Illinois EPA, for review and approval, a construction permit application for the Control System (“Construction Permit Application”), developed by the Defendant to achieve compliance with 35 Ill. Adm. Code Part 218, Subpart TT. If the Illinois EPA requests additional information from the Defendant to process the Construction Permit Application, the Defendant shall provide its response by a date specified by the Illinois EPA in its request.

3. Following issuance of a construction permit for the Control System (“Construction Permit”) by the Illinois EPA, the Defendant shall construct the Control System in accordance with the timelines and requirements of the Illinois EPA-issued Construction Permit. If the Construction Permit Application submitted under Section III.2 above is deemed incomplete or denied by the Illinois EPA, then the Defendant shall resubmit a revised construction permit application

addressing the reasons specified by the Illinois EPA in its notice of permitting action within 30 days from receipt of the same.

4. After the Defendant completes construction of the Control System in accordance with the Construction Permit, the Defendant shall conduct emissions testing to demonstrate compliance with 35 Ill. Adm. Code Part 218, Subpart TT. The Defendant shall perform the testing in accordance with the issued Construction Permit, the applicable test methods, Title 35 of the Illinois Administrative Code and an Illinois EPA-approved test protocol and schedule for testing.

5. If the results of the testing performed pursuant to Section III.4 above do not demonstrate compliance with 35 Ill. Adm. Code Part 218, Subpart TT, the Defendant shall develop and implement a new or revised control system in accordance with the requirements of Sections III.1 through III.3 above, pursuant to a timeline established by the Illinois EPA, and shall conduct testing to demonstrate compliance with 35 Ill. Adm. Code Part 218, Subpart TT in accordance with Section III.4 above.

6. Within sixty (60) days after the Defendant has completed the testing required by Section III.4 and/or III.5 above and has demonstrated compliance with 35 Ill. Adm. Code Part 218, Subpart TT, the Defendant shall submit to the Illinois EPA, for review and approval, an update ("FESOP Update") to its January 22, 2019 application for a Federally Enforceable State Operating Permit, which is pending with the Illinois EPA. The FESOP Update shall reflect the results of the testing performed pursuant to Section III.4 and/or III.5 above and any conditions imposed by the Construction Permit. If the Illinois EPA requests additional information from the Defendant to process the FESOP Update, the Defendant shall provide its response by a date specified by the Illinois EPA in its request.

IV. NOTICES

All submittals and correspondence relating to the requirements of this Agreed Order shall be directed to the following persons:

For the Plaintiff:

Daniel Robertson
Arlene Haas
Assistant Attorneys General
Illinois Attorney General's Office
Environmental Bureau North
69 W. Washington St., 18th Floor
Chicago, Illinois 60602
(312) 814-3532
(312) 814-3153
daniel.robertson@ilag.gov
arlene.haas@ilag.gov
(By electronic mail)

Maureen Wozniak
Division of Legal Counsel
Illinois Environmental Protection Agency
1021 North Grand Avenue East
Springfield, Illinois 62794
(217) 524-3157
maureen.wozniak@Illinois.gov
(By electronic mail)

Kent Mohr
Bureau of Air
Illinois Environmental Protection Agency
1021 North Grand Avenue East
Springfield, Illinois 62794
(217) 558-0798
kent.mohr@Illinois.gov
(By electronic mail)

For the Defendant:

Mark A. LaRose
LaRose & Bosco, Ltd.
200 N. LaSalle Street, Suite 2810
Chicago, Illinois 60601
(312) 642-4414
mlarose@laroseboscolaw.com
(By electronic mail)

LaDonna Driver
HeplerBroom LLC
4340 Acer Grove Drive
Springfield, Illinois 62711
(217) 993-6073
ldriver@heplerbroom.com
(By electronic mail)

Debbie Hays
Sims Limited
E.H.S. Business Partner, Central Region
2500 S. Paulina Street
Chicago, Illinois 60608
(773) 650-6495
debbie.hays@simsmm.com
(By electronic mail)

V. DUTY TO COOPERATE

The Plaintiff and the Defendant shall cooperate with each other in the implementation of this Agreed Order.

VI. COMPLIANCE WITH OTHER LAWS AND REGULATIONS

This Agreed Order in no way affects the responsibilities of the Defendant to comply with any other federal, state or local laws or regulations, including but not limited to the Act, 415 ILCS 5/1 *et seq.* (2020), and the Board Regulations, 35 Ill. Adm. Code Part 101 *et seq.*

VII. STIPULATED PENALTIES

1. If the Defendant fails to complete any activity or fails to comply with any response or reporting requirement by the date specified in this Agreed Order, the Defendant shall provide notice to the Plaintiff of each failure to comply with this Agreed Order and shall pay stipulated penalties in the amount of \$500.00 per day per violation for up to the first fifteen (15) days of violation, \$700.00 per day per violation for the next fifteen (15) days of violation, and \$1,000.00 per day per violation thereafter until such time that compliance is achieved. The Plaintiff may make a demand for stipulated penalties upon the Defendant for its noncompliance with this Agreed Order. However, failure by the Plaintiff to make this demand shall not relieve the Defendant of the obligation to pay stipulated penalties. All stipulated penalties shall be payable within thirty (30) calendar days of the date the Defendant knows or should have known of its noncompliance with any provision of this Agreed Order.

2. Pursuant to Section 42(g) of the Act, 415 ILCS 5/42(g) (2020), interest shall accrue on any penalty amount owed by the Defendant not paid within the time prescribed herein. Interest on unpaid penalties shall begin to accrue from the date such are due and continue to accrue to the date full payment is received. Where partial payment is made on any penalty amount that is due, such partial payment shall be first applied to any interest on unpaid penalties then owing.

3. The stipulated penalties shall be enforceable by the Plaintiff and shall be in addition to, and shall not preclude the use of, any other remedies or sanctions arising from the failure to comply with this Agreed Order.

4. All stipulated penalty and interest payments shall be made by certified check, cashier's check or money order payable to Illinois EPA for deposit into the Environmental Protection Trust Fund. Payments shall be sent by first class mail and delivered to:

Illinois Environmental Protection Agency
Fiscal Services
1021 North Grand Avenue East
P.O. Box 19276
Springfield, IL 62794-9276

The case name and case number shall appear on the face of the certified check, cashier's check or money order. A copy of the certified check, cashier's check or money order and any transmittal letter shall be sent to:

Daniel Robertson
Arlene Haas
Assistant Attorneys General
Environmental Bureau
Illinois Attorney General's Office
69 W. Washington Street, Suite 1800
Chicago, Illinois 60602

VIII. DISPUTE RESOLUTION

The parties shall use their best efforts to resolve any and all disputes or differences of opinion arising with regard to this Agreed Order, informally and in good faith, within seven (7) days of a party providing notice to the other parties of such a dispute. If, however, a dispute arises concerning this Agreed Order that the parties are unable to resolve informally, any party to this Agreed Order may, by written motion, within three (3) days of conclusion of the informal resolution efforts, request that an evidentiary hearing be held before the Circuit Court of Cook County, Illinois, to resolve the dispute between the parties.

IX. FORCE MAJEURE

1. The Defendant may declare *force majeure* in appropriate circumstances as follows:

a. A *force majeure* event is an event arising solely beyond the control of the Defendant, which prevents the timely performance of any of the requirements of this Agreed Order. For the purposes of this Agreed Order, *force majeure* shall include, but is not limited to, events such as floods, fires, tornadoes, other natural disasters, labor disputes beyond the reasonable control of the Defendant, or prohibitions imposed by any court having jurisdiction over the Defendant.

b. When, in the opinion of the Defendant, a *force majeure* event occurs which causes or may cause a delay in the performance of any of the requirements of this Agreed Order, the Defendant shall orally notify the Plaintiff within forty-eight (48) hours of the occurrence. Written notice shall be given to the Plaintiff as soon as practicable, but no later than ten (10) business days after the claimed occurrence.

c. Failure by the Defendant to comply with the notice requirements of the preceding paragraph shall render this *force majeure* provision voidable by the Plaintiff as to the specific event for which the Defendant has failed to comply with the notice requirement. If voided, this section shall be of no effect as to the particular event involved.

d. An increase in costs associated with implementing any requirement of this Agreed Order shall not, by itself, excuse the Defendant under the provisions of this Agreed Order from a failure to comply with such a requirement.

X. RIGHT OF ENTRY

In addition to any other authority, the Illinois EPA, its employees and representatives, and the Attorney General, his employees and representatives, shall have the right of entry into and

upon the Facility which is the subject of this Agreed Order, at all reasonable times for the purpose of conducting inspections and evaluating compliance status. In conducting such inspections, the Illinois EPA, its employees and representatives, and the Attorney General, his employees and representatives, may take photographs, samples, and collect information, as they deem necessary.

XI. EXTENSIONS AND MODIFICATIONS

The parties may, by mutual consent, extend any compliance dates or modify the terms of this Agreed Order without leave of court. Any such agreed modification shall be in writing, signed by authorized representatives of each party and incorporated into this Agreed Order by reference. Any request for modification shall be made by the Defendant in writing and shall be independent of any other submittal made pursuant to this Agreed Order. Moreover, notice of a request for any proposed modification shall be provided to the Plaintiff's representatives listed in Section IV of this Agreed Order.

XII. RESERVATION OF RIGHTS

Nothing contained herein shall be deemed an admission of any wrongful conduct or violation of any applicable statute, law or regulations thereunder by the Defendant, nor a finding of fact or adjudication by this Court of any of the facts or claims contained in the Complaint. The Plaintiff reserves the right to seek additional technical relief and civil penalties in this matter.

XIII. RETENTION OF JURISDICTION

This Court shall retain jurisdiction of this matter and shall consider any motion by the Plaintiff or the Defendant for the purposes of interpreting and enforcing the terms and conditions of this Agreed Order.

XIV. BINDING ON SUCCESSORS, ASSIGNS AND FUTURE OWNERS/OPERATORS

This Agreed Order shall be binding upon the Defendant, its successors, assigns and future owners and/or operators of the Facility.

XV. SIGNATURE

This Agreed Order may be signed in counterparts, all of which shall be considered one agreement.

XVI. STATUS CONFERENCE WITH THE COURT

This matter is set for status conference on February ²³~~18~~, 2022 at ^{10:15}~~9:30~~ a.m. without further notice. *The initial case management date of 2-15-22 is stricken. Defendant shall answer the Complaint on or before 12-17-21.*

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WHEREFORE the parties, by their representatives, enter into this Agreed Preliminary Injunction Order and submit it to the Court that it may be approved and entered.

AGREED:

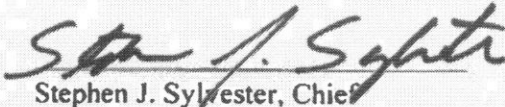
FOR THE PLAINTIFF:


PEOPLE OF THE STATE OF ILLINOIS
ex rel. KWAME RAOUL, Attorney General
of the State of Illinois,

ILLINOIS ENVIRONMENTAL
PROTECTION AGENCY

MATTHEW J. DUNN, Chief
Environmental/Asbestos Litigation Division

JOHN J. KIM, Director
Illinois Environmental Protection Agency

By: 
Stephen J. Sylvester, Chief
Environmental Bureau
Assistant Attorney General

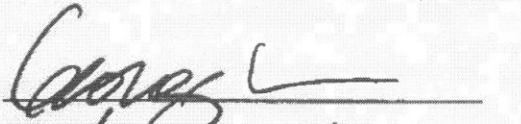
By: 
Charles W. Gunnarson
Chief Legal Counsel

Date: 10/8/21

Date: 10/8/21


FOR THE DEFENDANT:

METAL MANAGEMENT MIDWEST, INC.

BY: 
Name GEORGE MALAMIS
Title VICE PRESIDENT

Date: 10/6/21

ENTERED:


JUDGE Judge Pamela McLean Meyerson

Date: OCT 20 2021

Circuit Court - 2097